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Moore, Gilbert
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**CHESAPEAKE BAY
CRITICAL AREA COMMISSION**

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0139-V

IN RE: GILBERT AND JONI MOORE

THIRD ASSESSMENT DISTRICT

DATE HEARD: JUNE 20, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: CHARLENE MORGAN

DATE FILED: JUNE 26, 2000

PLEADINGS

Gilbert and Joni Moore, the applicants, seek a variance (2000-0139-V) to permit a pier with less setbacks than required and on a lot without a principal structure on property located along the east side of West Joyce Lane, west of Joyce Lane, Arnold.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Moore testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicants reside at 413 West Joyce Lane, Arnold. They also own an unimproved waterfront parcel on the Severn River accessed via a 15-foot right-of-way from Joyce Lane. The waterfront parcel is identified as Tax Map 39, Block 22, Parcel 278. It is zoned RLD with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The applicants seek to develop Parcel 278 with a 3.5' X 70' pier which will be located within 10 feet from the north and south

side lot lines extended.

The Anne Arundel County Code, Article 28, Section 2-2A-09 prohibits accessory structures absent a principal structure. Section 10-111(c) requires piers to maintain at least 15 feet from any side lot line extension. Accordingly, the proposal necessitates a variance to permit a pier absent a principal structure and a variance of five feet to the setback from each side property line extension.

Charlene Morgan, a zoning analyst with the Department of Planning and Code Enforcement, testified that Parcel 278 is not a building site and cannot support a principal structure. She observed that there is an existing pier five feet from the north side property line. She considered the request more than minimal relief; absent justification, she recommended its denial.

Mr. Moore testified that the applicants recently acquired the properties, which have long been in his family, for restoration. Parcel 278 was improved with a pier in 1946. The pier was maintained until 1972, but subsequently fell into disrepair and collapsed in the early 1980's. The witness supplied a photograph of the old pier. It provided access to water with a depth of five feet. According to the witness, the proposal will have no adverse impact on any of the existing piers or on navigation.¹ There was no adverse public testimony.

Upon review of the facts and circumstances, I find and conclude that the

¹Other than the pier to the north, the proposed pier is substantially shorter than neighboring piers. There is at least 60 feet of lateral clearance between the proposed pier and the pier to the south and the second pier to the north. The owners of all three of the closest adjacent piers testified in support of the application.

applicants are entitled to relief from the code. This case satisfies the test of unique physical conditions, consisting of a small and narrow (25-foot wide) waterfront parcel, such that there is no reasonable possibility of developing a pier in strict conformance with the code. Alternatively, the history of a pier at this location used in conjunction with the residence up the hill constitutes exceptional circumstances, such that the variance is necessary to avoid an unnecessary hardship and to enable the applicant to reconstruct the pier. I further find that the variance is the minimum necessary to afford relief. The pier is narrow and relatively short. There was nothing to suggest that the granting of the variance will alter the essential character, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. Rather, the evidence revealed that there are at least three neighboring parcels with piers absent principal structures. Their owners share the 15-foot right-of-way to Joyce Lane. The record demonstrated adequate clearance for navigation. As conditions of approval, the applicants shall obtain the appropriate permits from the Tidal Wetlands Division of the Maryland Department of the Environment and are not permitted any other accessory structures on Parcel 278.

ORDER

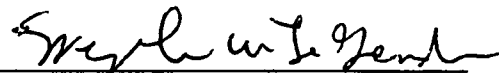
PURSUANT to the application of Gilbert and Joni Moore, petitioning for a variance to permit a pier with less setbacks than required and on a lot without a principal structure; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 26 day of June, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants request for a variance to permit a 3.5' X 70' pier absent a principal structure and a variance of 10 feet to the setbacks to the north and south side property line extensions is hereby **granted**.

The foregoing variance is subject to the following conditions:

1. The applicants shall obtain all appropriate permits from the Tidal Wetlands Division of the Maryland Department of the Environment.
2. There shall be no other accessory structures placed on Lot 278.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

Judge John C. North, II
Chairman



Ren Serey
Executive Director

**STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401
(410) 260-7516 Fax: (410) 974-5338

June 9, 2000

Ms. Charlene Morgan
Anne Arundel County Department of Planning and Code Enforcement
2664 Riva Road, MS 6301
Annapolis, MD 21401

RE: Variance 2000-0139-V, Gilbert Moore

Dear Ms. Morgan:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a pier with less setbacks than required and on a lot without a principal structure. The property is designated LDA and is currently undeveloped.

This office defers to the Maryland Department of the Environment (MDE) for recommendations on pier setback issues and to the County regarding the absence of a principal structure. The applicant should obtain all appropriate permits from the Tidal Wetlands Division of MDE prior to any final approvals.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler
Natural Resources Planner

cc: AA198-00

Branch Office: 31 Creamery Lane, Easton, MD 21601
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450